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Before the
Federal Communications Commission
Washington, D.C. 20554

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JUN 25 2002

In the Matter of)
)
Revision of the Commission's Rules)
to Ensure Compatibility with Enhanced 911)
Emergency Calling Systems)

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

CC Docket No. 94-102

**Request of NOW Licenses, LLC
for a Temporary Waiver
of Section 20.18(c) of the Commission's Rules**

NOW Licenses, LLC ("NOW Licenses"), by its attorneys and pursuant to Sections 1.3 and 1.925 of the Commission's Rules, hereby requests a two-year waiver of the requirement that digital wireless service providers be able by June 30, 2002, to transmit 911 calls from individuals with speech or hearing disabilities using Text Telephone (TTY) devices.¹ As NOW Licenses explains in more detail below, a temporary waiver until June 30, 2004, is appropriate under sections 1.3 and 1.925 of the Commission's rules² because NOW Licenses so far has been unable to obtain from vendors the software and handsets necessary to provide compatibility between TTY devices and NOW Licenses' digital wireless service.

I. Background

NOW Licenses owns and operates Personal Communications Service ("PCS") stations in ten small rural BTAs within Michigan. NOW Licenses uses GSM technology and operates a

¹ See 47 C.F.R. § 20.18(c); *In re* Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, *Fourth Report and Order*, FCC 00-436, at ¶ 1 (rel. Dec. 14, 2000) (Fourth Report and Order).

² 47 C.F.R. §§ 1.3, 1.925.

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Nortel MSC/DMS SNSE-100 switch currently running Nortel's GSM10 software. Nortel's GSM10 software does not support TTY compatibility for NOW Licenses' digital wireless service.

II. Steps NOW Licenses Is Taking to Enable Customers to Use TTY Devices in Conjunction with Digital Wireless Phones

NOW Licenses has been working with Nortel to upgrade from the GSM10 software to GSM13 software, which NOW Licenses has been advised supports TTY devices with digital wireless service. That upgrade is also being undertaken to achieve CALEA compliance. The upgrade will take place in steps, with NOW Licenses first upgrading to GSM12 in June, 2003. The target date for the upgrade to GSM13 is June 30, 2004, as outlined in NOW Licenses' flexible deployment guide template filed with the FBI and its CALEA extension request filed with the FCC.

NOW Licenses also must upgrade its Nortel radio equipment software from V11.4 to V12.4 version D. NOW Licenses' Airnet radio equipment already is outfitted with the requisite TTY functionality, although the applicable software option must still be purchased and activated. NOW licenses will also be required to upgrade its Operations Maintenance and Control Center (OMC), which entails switching out certain computer equipment. The upgrades to the radio equipment and OMC can be accomplished relatively quickly, but will be coordinated with the GSM13 upgrade to ensure a smooth transition and ease the fiscal burden on NOW Licenses, which is a small provider with limited resources.

NOW Licenses also is gathering information from handset manufacturers and Nortel in its search for TTY-complaint handsets that Nortel deems compatible with its switch. NOW Licenses has so far been unable to find such handsets, but is working with its vendors to acquire handsets consistent with the schedule outlined above for its network upgrades. Once network

TTY functionality is installed and NOW Licenses has the handsets, NOW Licenses will begin testing for compatibility and quality assurance within its own network.

Presuming Nortel's completion of the software upgrades to GSM12 and GSM13 occurs on schedule, NOW Licenses plans to test and deploy full TTY functionality throughout its entire 10 BTA service area by June 30, 2004.³ To date, however, Nortel has failed to provide NOW Licenses with firm dates or prices on the GSM software or radio equipment upgrades.

III. Waiver is Appropriate Under Sections 1.3 and 1.925

Waiver is appropriate under Section 1.3, which states that Commission rules may be suspended or waived "for good cause shown."⁴ NOW Licenses' situation presents good cause. Most all manufacturers of TTY-compliant equipment have taken longer than expected to develop an industry-wide TTY standard, as well as compliant hardware and software. Thus, despite its best efforts, NOW Licenses has so far been unable to secure from its vendors the network equipment, software, and handsets necessary to enable customers to use TTY devices in conjunction with digital wireless phones. NOW Licenses is working with its vendors to remedy these obstacles as soon as possible. NOW Licenses has already identified a solution and begun the process of upgrading its switch software and other equipment, consistent with its plans to achieve CALEA compliance.

Waiver is also appropriate under Section 1.925, which provides two alternative grounds for waiver. Under Section 1.925(b)(3)(i), the Commission may grant a waiver if it is shown that "[t]he underlying purpose of the rule(s) would not be served or would be frustrated by

³ This date may require adjustment if the anticipated dates for Nortel's installation of the software upgrades slip.

application to the instant case, and that a grant of the requested waiver would be in the public interest.”⁵ The purpose of the TTY digital wireless compatibility deadline is to accomplish compatibility between TTY devices and digital wireless phones as quickly as possible and to provide carriers with a date certain so that they would maintain TTY access as a priority.⁶ Those purposes are being served, as NOW Licenses is working as expeditiously as possible to implement TTY compatibility. NOW Licenses’ network upgrades are part of a larger undertaking it has initiated so that it will comply with several regulatory requirements, including CALEA. Further expediting that process is out of NOW Licenses’ hands and in the control of vendor schedules, so rigid application of the deadline will not serve the rule’s purpose.

Granting the waiver is in the public interest because it will allow NOW Licenses sufficient time to obtain and install the needed equipment and software, and to conduct essential testing to ensure that its solution works. When it adopted Rule 20.18(c), the Commission recognized the “technical difficulties associated with transmitting TTY calls on digital TTY systems” because carriers “cannot pass the Baudot-encoded audio tones produced by TTY devices.”⁷ In light of those technical difficulties, the Commission suspended enforcement of the requirement, delayed the compliance deadline, and granted numerous temporary waivers of the rule to wireless carriers operating digital networks.⁸ By extending these deadlines and granting

⁴ 47 C.F.R. § 1.3.

⁵ 47 C.F.R. § 1.925(b)(3)(i).

⁶ *Fourth Report and Order*, at ¶ 29.

⁷ *Fourth Report and Order*, at ¶ 2.

⁸ *Id.* See also *In re* Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, *Report and Order and*

waivers of the compliance deadlines, the FCC effectively acknowledged that the public interest is served by allowing manufacturers to complete developing their TTY products and by allowing carriers a reasonable amount of time to install, test and implement the solutions. Granting the waiver is also in the public interest because it will allow vendors to focus on larger, nationwide carriers, and thereby aid in getting compatible service out to as many people in as short a time as possible.

Under Section 1.925(b)(3)(ii), waiver is appropriate if, “[i]n view of unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative. That standard is met here. NOW Licenses’ factual circumstances are unique and unusual. Obtaining the required equipment and software is difficult for NOW Licenses because as a provider of service to only 10 small rural BTAs in Michigan, NOW Licenses has only limited resources, and does not have sufficient leverage to demand more of its vendors’ resources.

Because of NOW Licenses’ limited resources and the fact that its delayed implementation is the result of factors beyond its control, rigid application of the requirement would be inequitable and unduly burdensome, especially since NOW Licenses is concurrently in the process of trying to implement system modifications to implement the CALEA requirements. As discussed above in connection with the Section 1.925(b)(3)(i) standard, rigid application of the requirement would also be against the public interest because it would prevent NOW Licenses from conducting the necessary testing to ensure that its TTY solution works, and would slow down implementation for larger carriers with wider customer bases. Moreover, because NOW

Further Notice of Proposed Rulemaking, 11 FCC Rcd. 18676, 18701 (1996), *recon.*, 12 FCC Rcd. 22665 (1997) at ¶ 59; *Order*, 14 FCC Rcd. 1700 (1998); *Order*, 14 FCC Rcd. 3304 (1999).

Licenses' equipment and software availability problems and vendor issues are beyond its control, especially in light of its status as a small carrier, NOW Licenses has no reasonable alternative.

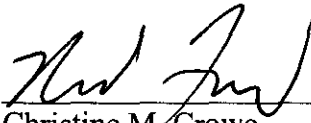
In any event, grant of the waiver will have little impact. Few if any compatible handsets are currently available to consumers. Thus, grant of the waiver is unlikely to delay the availability of TTY compatible service for digital wireless phones in NOW Licenses' service area.

IV. Conclusion

Having met the applicable standards in section 1.3 and 1.925 of the Commission's rules, NOW Licenses respectfully requests that the FCC grant NOW Licenses a limited, temporary waiver until June 30, 2004, of the requirement that digital wireless service providers be able to transmit 911 calls from individuals with speech or hearing disabilities using TTY devices.

Respectfully submitted,

NOW LICENSES, LLC

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June 25, 2002

Declaration of Christopher Hahn

I, Christopher Hahn, do hereby declare under penalty of perjury that:

1. I am the Network Operations Manager of NOW Licenses, LLC.
2. I have read the foregoing "Request of NOW Licenses, LLC, for a Temporary Waiver of Section 20.18(c) of the Commission's Rules."
3. I have personal knowledge of the facts set forth therein.
4. Except with respect to those facts of which judicial notice may be taken, those facts are true and correct to the best of my knowledge, information, and belief.

Executed this 24TH day of June, 2002



Christopher Hahn